

STATE OF WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF MINING AND RECLAMATION

Pre-Blast Surveys Policy and Procedure

NOTIFICATION OF PRE-BLAST SURVEY

For a single permit that is less than 200 acres, all owners and occupants of all man-made structures within 0.5 mile of the permitted area must be notified of their right to a pre-blast survey.

For a single permit that is greater than 200 acres, or if greater than 300 acres of contiguous permitted areas, all owners and occupants of all structures within 0.5 mile of the permitted area and seven tenths (0.7) of a mile of the proposed blasting site must be notified of their right to a pre-blast survey.

Blasting associated with surface disturbance for underground mines or none coal removal permits must notify all owners and occupants of man-made structures within 0.5 mile of the permitted area of their right to a pre-blast survey.

Section T-4a of the surface mining application (SMA) should be utilized when providing written notification to the owners and occupants of their rights to a pre-blast survey. Applicants for a mining permit shall obtain the information for Section T-4 by canvassing the area, the owners and occupants or through property tax records at the County Courthouse in which the property is located. All structures in the pre-blast survey area must have a survey, waiver or affidavit before blasting may begin.

Division of Mining and Reclamation (DMR) Form EB-39 (Notification Letter) must be used to notify all owners and occupants that the permittee will perform pre-blast surveys. The notification will be made in writing at least 30 days before blasting begins. The surveys must be conducted at no cost to the owner or occupant. The owner/occupant must have a minimum of 20 days after receipt of the notification to request a pre-blast survey.

Written notification may be given during a personal contact with the owner and occupant; provided the individual has identified himself as the owner/occupant and has provided a mailing address for the structure. The permittee or the permittee's designee must sufficiently explain, and emphasize the importance of receiving a pre-blast survey and allow the owner/occupant an opportunity to review the written notification before making a decision. If an attempt is made to hand deliver the notification to the owner/occupant and he/she rejects it, this is sufficient notification attempted. Document the attempt on an affidavit.

Written notification shall be defined as accepted certified mail or personal delivery to the owner and occupant.

WAIVE RIGHT TO PRE-BLAST SURVEY

The owner of a structure within the pre-blast survey area may waive the right to a pre-blast survey in writing (DMR Form EB-39B). If a person other than the owner occupies the structure, both the owner and the occupant must waive the right to a pre-blast survey. If a survey is not conducted, a waiver or affidavit must be submitted for both the owner and occupant. If the structure owner/occupant is listed incorrectly in T-4a, the survey, waiver or affidavit must reflect the changes.

SUBMITTAL OF PRE-BLAST SURVEYS

Pre-blast surveys should be submitted within 6 months of the date of the field inspection. If older than 6 months, contact DMR to see if acceptable.

Surveys should be submitted in batches of no more than 100 surveys at a time.

A survey, waiver or affidavit must be submitted for each structure listed in Section T-4a of the permit application. Two (2) copies of each pre-blast survey, the original of each waiver and affidavit must be submitted to DMR at least 15 days before blasting is to begin. DMR will review each survey, waiver or affidavit as to form and completeness and notify the operator of any deficiencies. Corrections of deficiencies must be made within 30 days after the company receives the correction request. Surveys, waivers and affidavits that have not been corrected within 30 days may be rejected and returned to the permittee. No approval to blast will be given until all corrections are made.

Section T must be reviewed and signed off by an DMR specialist to establish the T-4a list to be verified. Once Section T is signed off by DMR, a comparison of T-4a and survey submittal will be done. When all structures listed in T-4a have a survey, waiver or affidavit accepted by DMR, the permittee will be notified, in writing, that the pre-blast survey process has been completed and blasting may commence, provided all other permitting requirements have been met. Surveys may be submitted and reviewed by DMR prior to Section T signoff or permit approval.

If new structures are identified in the field that are not listed in the approved T-4a, a survey, waiver or affidavit should be executed and submitted to DMR. A new blasting map must be submitted to identify the location of the new structures. If structures listed in the approved T-4a no longer exist, an affidavit is to be completed documenting the circumstance.

DMR Form EB-41 (inventory log-sheet) listing the surveys being submitted must accompany each submittal of surveys, waivers or affidavits. All EB-41's should be in numerical order of the structure numbers being submitted. The EB-41 must be completed in its entirety including addresses and should be typed and or legible printing. Once all structures listed on the EB-41 are accepted by DMR, a copy of the EB-41 will be sent to the permittee for their information or tracking.

Each protected structure must have its own unique identification number. Two structures associated with the same permit cannot have the same structure number (even if they are owned by the same person). However, a house that includes additional structures (i.e. buildings, garages, etc.) should be covered under one structure number and one survey. The blasting map should identify the difference between occupied dwellings and their associated structures. The legend should identify these different symbols. If the T-4a was approved incorrectly listing a garage or outbuilding with a separate number, one survey should include all structure numbers and information about each structure in that one survey.

Structure numbers cannot be changed once a survey, waiver or affidavit has been submitted and accepted by DMR. Surveys are tracked by DMR on a permit-by-permit basis. Therefore, it is possible for a structure to have a different number for a different permit.

The EB-40 (survey form) must indicate the specific reason why the survey is being submitted. "Initial" submittal is to only be used when surveys are being submitted for the very first time for this particular permit. The "reason" for submittal is an indicator which T-4 is to be used to verify that all structures have a survey, waiver or affidavit.

A copy of the accepted pre-blast survey will be forwarded to the structure owner by DMR. Upon written request to DMR, an occupant may request a copy of the pre-blast survey. The company shall provide this copy of the pre-blast survey at no cost.

PRE-BLAST SURVEY

Submittals must be in a clear front clasp binder. The first page of the DMR form EB-40 (survey form) will be the front of the survey – it is not recommended to use a separate coversheet. All surveys shall have a one (1) inch margin to provide sufficient room for binding without obstructing the form. Writing must be legible on the EB-40.

All surveys must include a letter from the permittee's insurance carrier stating that the insurance carrier acknowledges the surveying company is performing the surveys.

An owners name and mailing address is required for all surveys. A survey will not be accepted without this information.

General delivery addresses for owners will not be accepted unless it is verified by the county tax records or the Postmaster agrees to deliver to a "general delivery" address. The survey must document the details of the verification to allow use of a general delivery address.

If the survey is not a complete survey, one of the following must be included in the survey:

- a. include a copy of the "Request for a Pre-blast Survey" form indicating the owner/occupant requested partial or exterior only;
- b. such request for partial or exterior only survey should be noted on the survey and signed by the owner/occupant, or;
- c. if the owner/occupant refuses to sign the pre-blast survey form documenting the refusal, the affidavit section of the survey form is to be completed to specifically document the owner refused a complete survey. The affidavit shall be detailed as to the owner's/occupant's statements to such denial and a description of the area not surveyed.

Pre-blast surveys shall list all defects identified during the survey. A generalized statement that is used to infer that a type of identified defect is common to a structure or room or wall, etc. is not acceptable unless that statement is accompanied with drawings, sketches or other documentation to adequately identify all those defects.

Room sketches submitted that have no defects identified must include a statement "room was completely inspected" or "no defects observed".

Any special situations or special structural conditions observed that may be affected by blasting should be noted in the survey.

Written documentation (a description or abbreviation of the defect) is required for all defects observed. Written documentation must be supplemented in the survey by photos of the defect, or by drawing/sketching the defects. Photos or drawings must be correlated to the defect in a manner to sufficiently document that a specific photo/drawing documents a specific defect. Thumbnails will be accepted but must be accompanied by a compact disk of the photos in all copies of the survey. Digital cameras are to be set to the highest quality.

Overview photos must be included of the exterior and identified as "overview" photos to identify the structure being surveyed. One overview photo must be of the structure to clearly identify the entire structure as a reference photo for the survey. All exterior defects must also be written and documented with photos or drawings.

Photos of both the interior and exterior that are taken to document the current condition with no defects observed should be labeled "overview of ..." for that photo.

Water samples should be obtained prior to entrance into any water filtration or treatment system. If it is not possible to obtain an unfiltered or untreated water sample, there shall be documentation as to the type and specifications of the filtration or treatment system. The surveyor shall advise the owner/occupant that water samples taken from the outlet stream of a treatment/filtration system may not be sufficient to document the water quality prior to mining and blasting. This should be documented on the pre-blast survey. If a survey is not conducted for a structure for various reasons (uninhabitable, burned down, etc.) and a well is associated with the structure, a sample of the water is required or

documentation as to the reason the well or spring was not sampled. If the owner/occupant does not want a water sample taken, it must be documented in the survey.

If the well is used for other purposes than drinking, (i.e. filling up swimming pool, watering garden, watering livestock, etc.), a sample is still required. If the owner/occupant does not want a sample taken, this must be documented in the survey. If a water sample is not taken due to “well not in use”, this shall mean that the owner/occupant intends to never use the well.

If the water is being supplied by a well owned by someone else, document well owners name and structure number in survey, type of water source and include a copy of the water sample for that well.

The pre-blast survey form and affidavit form relating to the condition of a structure must be completed by an approved pre-blast surveyor or a pre-blast surveyor-in-training. Individuals do not have to be an approved pre-blast surveyor to canvas the pre-blast notification area to identify names and addresses for owners/occupants of structures. These same individuals may execute a waiver or affidavit relating to contacts or attempted contacts with owners/occupants of structures. However these individuals should stress the importance of having a complete pre-blast survey conducted during all contacts with structure owner/occupant.

AFFIDAVITS

If a pre-blast survey was not performed nor a waiver obtained, an affidavit (DMR form EB-39C) must be completed to document why a survey was not conducted.

If written notification was received by certified mail and/or hand delivered to the owner and occupant, only one (1) further attempt is required to obtain a survey or waiver. This attempt can be a telephone call, a visit to the residence, another mailing, etc. If this attempt is unsuccessful in obtaining a survey or waiver, an affidavit must be completed. Attached to the affidavit must be a copy of the certified mail return receipt card or the affidavit must document that written notification was hand delivered to the owner / occupant. The date, method and time of the follow-up attempt must be noted on the affidavit. If personal contact was made and the owner/occupant refused to accept the notification letter and refused a survey and refused to sign a waiver, document the circumstances in the affidavit.

If the owner/occupant did not receive written notification by certified mail or personal delivery, at least three (3) attempts must be made, at varying times of the day and evening hours of both weekdays and weekends over a 30-day period to contact the owner and occupant with notification. One of the three attempted contacts must be to mail the notification certified mail. Another attempt must be to leave a written notice at the residence or structure. The third attempt can be a site visit, regular mail, phone call, etc. If a survey or waiver is not obtained after the 3 attempts, an affidavit may be completed. The affidavit must document the dates, times and methods of the attempts and must be completed by the individual(s) attempting the contacts.

An affidavit will be accepted for structures that are uninhabitable or that are in such a poor state that the safety of the surveyor is of concern, or that visual observations indicate that the structure is not a proper candidate for a survey. The surveyor should provide written comments on the affidavit as to the condition of the structure. A photo must be attached to the affidavit to verify the adverse condition of the structure. The owner of the structure’s name and address must be included.

If the owner or occupant fails to meet two (2) scheduled appointments to conduct a pre-blast survey and the permittee or designee is not notified of the cancellations, an affidavit can be executed documenting that two appointments were scheduled and the owner/occupant failed to be there or call to cancel.

UPDATE TO EXISTING PRE-BLAST SURVEY

An owner may request an amended pre-blast survey on structures constructed or renovated after the original pre-blast survey was performed. This submittal would be identified as a “renovation” on the pre-blast survey form (EB-40).

Renovation surveys should identify what has been renovated since the original survey. For surveys that are submitted for “renovations”, only the rooms or areas of renovation need to be included in the submittal.

FILE PUBLIC NOTICE

The operator shall file public notice that a pre-blast survey has been conducted, waived, or affidavit executed that a pre-blast survey was not conducted (DMR form EB-39D). When all pre-blast surveys have been submitted and accepted by the DMR, the EB-39D is to be filed in the office of the county clerk of the county commission in the county where pre-blast surveys were conducted or waived. The operator shall then submit verification of this filing with the courthouse to DMR. A copy of the EB-39D stamped “received” by the courthouse will be sufficient documentation that the public notice has been filed. This filing shall be made within 15 days of notification of acceptance from DMR.